



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2012-0343; FRL-9701-8]

Approval and Promulgation of Air Quality Implementation Plan; Alabama; Disapproval of 110(a)(2)(E)(ii) Infrastructure Requirement for the 1997 Annual and 2006 24-hour PM_{2.5} Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to disapprove a portion of the State Implementation Plan (SIP) submissions, submitted by the State of Alabama, through the Alabama Department of Environmental Management (ADEM), on July 25, 2008, and on September 23, 2009, to demonstrate that the State meets requirements of sections 110(a)(1) and (2) of the Clean Air Act (CAA or Act) for the 1997 annual and 2006 24-hour fine particulate matter (PM_{2.5}) national ambient air quality standards (NAAQS). Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an “infrastructure” SIP. Specifically, EPA is proposing to disapprove sub-element 110(a)(2)(E)(ii) that requires the State to comply with section 128 of the CAA. EPA is taking a separate action to address all the other infrastructure elements for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS.

DATES: Comments must be received on or before [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2012-0343 by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. E-mail: R4-RDS@epa.gov.
3. Fax: (404) 562-9019.
4. Mail: EPA-R04-OAR-2012-0343, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960.
5. Hand Delivery or Courier: Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. "EPA-R04-OAR-2012-0343." EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through www.regulations.gov or e-mail, information that you consider to be CBI or otherwise protected. The www.regulations.gov website is an "anonymous access" system, which means

EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9043. Mr. Lakeman can be reached via electronic mail at lakeman.sean@epa.gov.

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

- I. What Action is EPA Proposing in Today's Rulemaking?**
- II. What is the Background for This Proposed Action?**
- III. What is EPA's Analysis of Alabama's Submission for Section 110(a)(2)(E)(ii) for the 1997 Annual and 2006 24-Hour PM_{2.5} NAAQS?**
- IV. Proposed Action**
- V. Statutory and Executive Order Reviews**

I. What Action is EPA Proposing in Today's Rulemaking?

On July 25, 2008, and on September 23, 2009, the State of Alabama, through ADEM, provided submissions to EPA certifying that the Alabama SIP meets the requirements of sections 110(a)(1) and (2) of the CAA for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS.¹

¹ Alabama's July 25, 2008, and September 23, 2009, submissions explained that Alabama's current SIP sufficiently addresses requirements of section 110(a)(2) for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS, however, today's proposed action only relates to the section 110(a)(2)(E)(ii) requirements for the 1997 annual and 2006 24-hour PM_{2.5}

Specifically, Alabama certified that its current SIP adequately addresses the elements of CAA section 110(a)(2)(E)(ii) for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS. CAA section 110(a)(2)(E)(ii) requires that states comply with the requirements respecting state boards pursuant to section 128 of the Act. In today's action, EPA is proposing to disapprove the portion of Alabama's July 25, 2008, and September 23, 2009, submissions related to the requirements respecting state boards for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS because EPA has made the preliminary determination that these submissions do not meet the requirements of section 110(a)(2)(E)(ii) of the CAA for this NAAQS. EPA's rationale for this proposed disapproval is provided in the Section III of this rulemaking.

II. What is the Background for This Proposed Action?

On July 18, 1997 (62 FR 38652), EPA established an annual PM_{2.5} NAAQS at 15.0 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) based on a 3-year average of annual mean PM_{2.5} concentrations. At that time, EPA also established a 24-hour NAAQS of 65 $\mu\text{g}/\text{m}^3$. *See* 40 CFR 50.7. On October 17, 2006 (71 FR 61144), EPA retained the 1997 annual PM_{2.5} NAAQS at 15.0 $\mu\text{g}/\text{m}^3$ based on a 3-year average of annual mean PM_{2.5} concentrations, and promulgated a new 24-hour NAAQS of 35 $\mu\text{g}/\text{m}^3$ based on a 3-year average of the 98th percentile of 24-hour concentrations. By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised NAAQS. Sections 110(a)(1) and (2) require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the NAAQS.

NAAQS. EPA is addressing the other section 110(a)(2) requirements for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS in relation to Alabama's SIP in rulemaking separate from today's proposed rulemaking.

States were required to submit such SIPs to EPA no later than July 2000 for the 1997 annual PM_{2.5} NAAQS, no later than October 2009 for the 2006 24-hour PM_{2.5} NAAQS.

On March 4, 2004, Earthjustice submitted a notice of intent to sue related to EPA's failure to issue findings of failure to submit related to the "infrastructure" requirements for the 1997 annual PM_{2.5} NAAQS. On March 10, 2005, EPA entered into a consent decree with Earthjustice which required EPA, among other things, to complete a Federal Register notice announcing EPA's determinations pursuant to section 110(k)(1)(B) as to whether each state had made complete submissions to meet the requirements of section 110(a)(2) for the 1997 PM_{2.5} NAAQS by October 5, 2008. In accordance with the consent decree, EPA made completeness findings for each state based upon what the Agency received from each state for the 1997 PM_{2.5} NAAQS as of October 3, 2008.

On October 22, 2008, EPA published a final rulemaking entitled "Completeness Findings for Section 110(a) State Implementation Plans Pertaining to the Fine Particulate Matter (PM_{2.5}) NAAQS" making a finding that each state had submitted or failed to submit a complete SIP that provided the basic program elements of section 110(a)(2) necessary to implement the 1997 PM_{2.5} NAAQS (*see* 73 FR 62902). For those states that did receive findings, the findings of failure to submit for all or a portion of a state's implementation plan established a 24-month deadline for EPA to promulgate a federal implementation plan (FIP) to address the outstanding SIP elements unless, prior to that time, the affected states submitted, and EPA approved, the required SIPs. The findings that all or portions of a state's submission are complete established a 12-month deadline for EPA to take action upon the complete SIP elements in accordance with section 110(k).

Alabama's infrastructure submissions were received by EPA on July 25, 2008, for the 1997 annual PM_{2.5} NAAQS, and on September 23, 2009, for the 2006 24-hour PM_{2.5} NAAQS. The submissions were determined to be complete on January 25, 2009, and March 23, 2010, respectively. Alabama was among other states that did not receive findings of failure to submit because it had provided a complete submission to EPA to address the infrastructure elements for the 1997 PM_{2.5} NAAQS by October 3, 2008.

On July 6, 2011, WildEarth Guardians and Sierra Club filed an amended complaint related to EPA's failure to take action on the SIP revision related to the "infrastructure" requirements for the 2006 24-hour PM_{2.5} NAAQS. On October 20, 2011, EPA entered into a consent decree with WildEarth Guardians and Sierra Club which required EPA, among other things, to complete a Federal Register notice of the Agency's final action either approving, disapproving, or approving in part and disapproving in part the Alabama 2006 24-hour PM_{2.5} NAAQS Infrastructure SIP revision addressing the applicable requirements of sections 110(a)(2)(A)-(H), (J)-(M), except for section 110(a)(2)(C) the nonattainment area requirements and section 110(a)(2)(D)(i) interstate transport requirements, by September 30, 2012.

Today's action is proposing to disapprove the portion of Alabama's July 25, 2008, and September 23, 2009, submissions which was intended to meet the requirement to address sub-element 110(a)(2)(E)(ii) for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS.

III. What is EPA's Analysis of Alabama's Submission for Section 110(a)(2)(E)(ii) for the 1997 Annual and 2006 24-hour PM_{2.5} NAAQS?

On July 25, 2008, and on September 23, 2009, the State of Alabama, through ADEM, provided letters to EPA certifying that Alabama's SIP meets the requirements of sections 110(a)(1) and (2) of the CAA for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS.

Specifically, for sub-element 110(a)(2)(E)(ii) Alabama's July 25, 2008, submission states that "Requirements dictating the roles of local or regional governments (local programs) are derived from Ala Code §22-28-11 (2006 Rplc.Vol), as amended..." and the September 23, 2009, submission states that "This requirement is met through Ala Code §22-22A-6(j) which ensures that the state comply with section 128 of the CAA."

Section 110(a)(2)(E)(ii) requires that each implementation plan provide that states comply with the requirements respecting state boards pursuant to section 128 of the Act. Section 128 requires that: 1) the majority of members of the state board or body which approves permits or enforcement orders represent the public interest and do not derive any significant portion of their income from persons subject to permitting or enforcement orders under the CAA; and 2) any potential conflicts of interest by such board or body, or the head of an executive agency with similar powers be adequately disclosed. After reviewing Alabama's SIP, EPA has made the preliminary determination that the State's implementation plan does not contain provisions to comply with section 128 of the Act, and thus Alabama's July 25, 2008, and on September 23, 2009, submissions do not meet the requirements of the Act. While Alabama has state statutes that may address, in whole or part, requirements related to state boards at the state level, these provisions are not included in the SIP as required by the CAA.

Based on an evaluation of the federally-approved Alabama SIP, EPA is proposing to disapprove Alabama's certification that its SIP meets the requirements of 110(a)(2)(E)(ii) of the CAA for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS. The submitted provisions which purport to address 110(a)(2)(E)(ii) are severable from the other infrastructure elements. Therefore, EPA is proposing to disapprove those provisions which relate only to sub-element 110(a)(2)(E)(ii).

IV. Proposed Action

EPA is proposing to disapprove the portion of Alabama's July 25, 2008, and September 23, 2009, submissions, relating to section 110(a)(2)(E)(ii). This proposed disapproval is based on EPA's preliminary determination that Alabama's SIP does not satisfy these requirements for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS because provisions required by section 128 of the CAA are not approved in the Alabama SIP. Today's proposed action only relates to the section 110(a)(2)(E)(ii) requirements for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS. EPA is addressing the other section 110(a)(2) requirements for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS for Alabama's SIP in a rulemaking separate from today's proposed rulemaking.

Under section 179(a) of the CAA, final disapproval of a submittal that addresses a requirement of a CAA Part D Plan or is required in response to a finding of substantial inadequacy as described in CAA section 110(k)(5) (SIP call) starts a sanctions clock. Section 110(a)(2)(E)(ii) provisions (the provisions being proposed for disapproval in today's notice) were not submitted to meet requirements for Part D or a SIP call, and therefore, if EPA takes final action to disapprove this submittal, no sanctions will be triggered. However, if this disapproval action is finalized, that final action will trigger the requirement under section 110(c) that EPA promulgate a FIP no later than 2 years from the date of the disapproval unless the State corrects the deficiency, and EPA approves the plan or plan revision before EPA promulgates such FIP.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to act on state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law.

A. Executive Order 12866, Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive Order.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq*, because this proposed SIP disapproval under section 110 of the CAA will not in-and-of itself create any new information collection burdens but simply disapproves certain state requirements for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the

rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) a small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This proposed SIP disapproval under section 110 of the CAA will not in-and-of itself create any new requirements but simply disapproves certain State requirements for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the CAA prescribes that various consequences (e.g., higher offset requirements) may or will flow from this disapproval does not mean that EPA either can or must conduct a regulatory flexibility analysis for this action. Therefore, this action will not have a significant economic impact on a substantial number of small entities. EPA continues to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538 for state, local, or tribal governments or the private sector. EPA has determined that the proposed disapproval action does not include a federal mandate that may result in estimated costs of \$100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This action proposes to disapprove pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure “meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.”

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely disapproves certain state requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175, Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP EPA is proposing to disapprove would not apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This proposed SIP disapproval under section 110 the CAA will not in-and-of itself create any new regulations but simply disapproves certain state requirements for inclusion into the SIP.

H. Executive Order 13211, Actions that Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA, Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so

would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through the Office of Management and Budget, explanations when the Agency decides not to use available and applicable voluntary consensus standards. EPA believes that this action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the CAA.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this proposed action. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices based on the criteria of the CAA. Accordingly, this action merely proposes to disapprove certain state requirements for inclusion into the SIP under section 110 the CAA and will not in-and-of itself create any new requirements. Accordingly, it does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, and Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 12, 2012.

A. Stanley Meiburg,

Acting Regional Administrator,

Region 4.